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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/817,965      | 03/27/2001  | Claus Bauer          | GR 00 P 1603        | 9887             |

7590 01/12/2004

LERNER AND GREENBERG, P.A.  
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Post Office Box 2480  
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EXAMINER

PHAN, THAI Q

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2128

DATE MAILED: 01/12/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/817,965

Applicant(s)  
Claus Bauer

Examiner  
Thai Phan

Art Unit  
2128



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Oct. 20, 2003

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-6 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-6 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on Mar. 27, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some\* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) ☐ Notice of Informal Patent Application (PTO-152)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6) ☐ Other:

### **DETAILED ACTION**

This Office Action is in response to applicant's amendment filed on Oct. 20, 2003.

Claims 1-6 are pending in this Office Action.

#### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Drawings***

2. This application has been filed with formal drawings which are acceptable for examination purposes only.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernam et al., US patent no. 6,097,951.

As per claim 1, Ernam discloses a method and apparatus for scaling a wireless telecommunications network with feature limitations substantially similar to the claimed invention (Summary of the Invention). According to Ernam, the method for scaling the wireless network architecture for optimally processing subscriber calls includes steps:

setting up cellular functions for partitioning as functions of a number of subscribers of a radio or wireless communication network, a capacity or size of a load selected from the group consisting of a radio load and a switching load, and that is caused by a geographically oriented unit of a hierarchical level at the communication network (Figs. 1-3, col. 1, lines 16-53, col. 2, lines 15-49, col. 6, lines 7-41, col. 7, lines 25-48, for example),

setting up a scalable architecture scheme function (a formula) which uses cellular functions for permitting or distributing a size of a processing load occurring at each node, in case of a given assignment of geographically oriented units of the first partitioned hierarchy, for a given capacity or number of subscribers (Figs. 2-3, col. 6, lines 7-41, col. 7, lines 25-48, col., 10, lines 40-67),

using the plan for assignment such as dispatch MSC for permitting a possible growth in a number of subscribers of the communication network (col. 4, lines 27-41, col. 7, lines 25-48, for example). Ernam discloses relative load of subscriber distribution, and not based on geographical cell structure (col. 7, lines 25-48, col. 10, lines 48-58, for example). Ernam does not expressly disclose without a processing load at a geographically oriented unit of the second hierarchical level and a formula as claimed.

Practitioner in the art at the time of the invention was made would have found Ernam disclosure of scalable RF communication network with feature of load distribution relative to MSCs and the load distribution is not based on geographically cell structure obviously implies the limitation of without a processing load as claimed because the scalable network uses loads from pools of MSCs and such pool of MSCs is not based on or not required geographically oriented units as claimed to predict a network capacity (col. 7, lines 8-48, col. 8, lines 32-61). And Ernam distribution function is formulated to distribute user subscriber calls to the network for optimization (col. 7, lines 25-48, col. 10, line 59 to col. 11, line 14, for example). In other word, the distribution function is a formula as claimed to analyze and distribute user calls to the network mobile switching centers for optimizing network capacity and performance.

As per claim 2, Ernam discloses optimization which could include linear optimization (col. 7, lines 10-20).

As per claim 3, Ernam discloses cell bases and cell boundaries for the base station in the wireless communication network as claimed.

As per claim 4, Ernam discloses cell-based functions for approximately partitioning and distribution of calling loads, etc. (col. 6, line 59 to col. 7, line 8, for example).

As per claims 5 and 6, Ernam discloses switching at the boundaries of cells and iterative search for optimized load distribution (col. 8, lines 12-51, for example).

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument Ernam does not remotely suggest or teach to any kind of a formula for processing a processing load occurring at each node and to assigning geographically oriented units of hierarchical levels (page 6, second paragraph to page 7, paragraph 1), the examiner responds Ernam disclosure implies the argued features. Ernam discloses a distribution function (or a formula) for distributing subscriber loads to mobile switching units in the communication network (col. 7, lines 25-48). The distribution function is formulated to distribute user subscriber calls to the network for optimization (col. 7, lines 25-48, col. 10, line 59 to col. 11, line 14, for example). Ernam also discloses geographical partitioning in network planning and assigning MSC to the partitioned geographical boundaries for network control and planning (col. 2, lines 50-65, for example) or other partitioning methods to improve network capacity, load balance, and network overhead as stated by Ernam.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to patent examiner Thai Phan whose telephone number is (703) 305-3812.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)305-3900.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

P.O. Box 1450

Alexandria, VA 22313-1450

**or faxed to:**

(703) 872-9306, (for formal communications intended for entry)

**Or:**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington, VA., Sixth Floor (Receptionist).

January 7, 2004

*Thai Phan*  
Thai Phan  
Patent Examiner  
AU: 2128